liability as distinct from the loss of the re-insured, and have allowed a recovery by the re-insured of an amount in excess of that paid by him to the insured. *Allemania Ins. Co.* v. *Fireman's Ins. Co.*, 209 U. S. 326, 332. See *British, etc. Ins. Co.* v. *Duder*, [1914] 3 K. B. 835, 839 (overruled by the principal case). This result is almost universally adopted in case the re-insured becomes insolvent. See 28 HARV. L. REV. 302. Many courts and writers, reasoning from these cases, support a recovery in excess of indemnity paid when the re-insured is solvent. *Eagle Ins. Co.* v. *Lafayette Ins. Co.*, 9 Ind. 443; *Cass County* v. *Mercantile, etc. Ins. Co.*, 188 Mo. 1; *Grant* v. *American Central Ins. Co.*, 68 Mo. 503. See ARNOULD, MARINE INSURANCE, 9 ed., 323. Such a result enables the re-insured to make a profit, an idea abhorrent to the fundamental conception of insurance law that the contract is one of indemnity only, and in this respect re-insurance is the same as primitive insurance. See PORTER, INSURANCE, 3 ed., 259; ARNOULD, MARINE INSURANCE, 9 ed., 323. Nor is there, as in the case of insolvency, any danger of a multiplicity of suits. See 28 HARV. L. REV. 302; 15 *id.* 866; *Philadelphia, etc. Ins. Co.* v. *Fame Ins. Co.*, 9 Phila. 292. But even the courts which have adopted the result of the principal case have failed to observe the distinction created by insolvency and have apparently believed that the result was contrary to the great weight of authority. *Illinois, etc. Ins. Co.* v. *Andes Ins. Co.*, 67 Ill. 362; *Ins. Co.* v. *Ins. Co.*, 38 Oh. St. 11; *Delaware Ins. Co.* v. *Quaker City Ins. Co.*, 3 Grant (Pa.) 71.

JUDGES — DISQUALIFICATION — PECUNIARY INTEREST — SUBORDINATION OF THE RULE TO NECESSITY. — A judge of a state Supreme Court brings a writ in that court for a *mandamus* to compel the state auditor to issue a warrant for fifty dollars in pursuance of a state statute providing that where a judge of the Supreme Court changed his residence to the state capital, he should be paid fifty dollars per month additional, in consideration of increased expenses. The auditor objected that, as the judges of the Supreme Court were pecuniarily interested, they were disqualified from participating in the proceedings. *Held*, that the court had power to grant the writ. *McCoy* v. *Handlin*, 153 N. W. 361 (S. D.).

The power and efficiency of any judicial system depend upon its freedom from all suspicion of bias or partisanship. Thus in general a vested pecuniary interest disqualifies a judge from sitting on a case. *Dimes* v. *Grand Junction Canal*, 3 H. L. Cas. 759; *Ex parte Cornwell*, 144 Ala. 497, 39 So. 354; *City of Grafton* v. *Holt*, 58 W. Va. 182, 52 S. E. 21. But as a strong public policy demands that every cause should have a trial, when the interested judge alone has jurisdiction to try the case, if his pecuniary interest is slight it is clear that he may sit. *Matter of Ryers*, 72 N. Y. 1; *Hill* v. *Wells*, 6 Pick. (Mass.) 104; *Commonwealth* v. *Emery*, 11 Cush. (Mass.) 406. Even where the interest is large, if indirect it has been held that a judge may participate in the proceedings. *State* v. *Polley*, 34 S. D. 565, 138 N. W. 300. But where the interest is large and direct, there is no settled authority. Where the exclusive jurisdiction is given by the constitution, it is difficult to refuse jurisdiction. See *Matter of Leefe*, 2 Barb. (N. Y.) 39, 40. But even if the exclusive jurisdiction is solely the result of statute, it is submitted that the character and extent of the interest should not affect the rule. In the conflict of policies which this situation involves, the considerations in favor of having someone to hear every cause outweigh in all cases the considerations against allowing an interested judge to act.

JURISPRUDENCE — REVERSAL OF JUDICIAL DECISION — CRIMINAL LIABILITY FOR ACT DECLARED INNOCENT BY DECISION SUBSEQUENTLY OVERRULED. — The defendant as officer of a bank received a deposit, having good reason to believe the bank insolvent. The highest court of the state had previously held that such an act did not fall within a criminal statute. The court

later overruled its former decision and decided that the act did fall within the statute. The defendant was then indicted under the statute. The trial court sustained a demurrer to the indictment and the state appealed. *Held*, that the judgment must be affirmed and the defendant discharged. *State v. Longino*, 67 So. 902 (Miss.).

For a discussion of how far an overruling decision may be retroactive, see NOTES, p. 80.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACT — AMOUNT OF COMPENSATION AWARDED WHERE THE WORKMAN HAD FORMERLY BEEN INJURED. — The plaintiff, having formerly lost one eye, lost the other in the defendant's employment and sued for the injury. The Michigan Workmen's Compensation Act provides different proportions of the employee's average wage where total and where partial disability results. In addition, some injuries, including the loss of both eyes, are expressly specified as total disabilities. The loss of one eye is a partial disability. *Held*, that the plaintiff was entitled only to compensation for partial disability. *Weaver* v. *Maxwell Motor Co.*, 152 N. W. 993 (Mich.).

Under a similar statute in New York, which specifies the loss of two hands and of one hand as total and partial disabilities respectively, the plaintiff, who had previously lost one hand, lost the other. He sued. *Held*, that he could recover for total disability. *Schwab* v. *Emporium Forestry Co.*, 153 N. Y. Supp. 234 (Sup. Ct. App. Div., 3d Dept.).

It is a well-established rule of common law that a person is liable for the damages which proximately result from his culpable act, no matter whether the condition of the injured person before that act caused the damages to be greater than they would otherwise have been. *Basham* v. *Hammond Packing Co.*, 107 Mo. App. 542, 81 S. W. 1227; *Jordan* v. *City of Seattle*, 30 Wash. 298, 70 Pac. 743. The Workmen's Compensation Acts, though they have done away with recovery in tort, clearly aim to supply relief to the injured employee regardless of the culpability of the employer. See Wambaugh, "Workmen's Compensation Acts," 25 HARV. L. REV. 129, 131. Again, the amount of compensation recoverable under the Acts is made proportional to the loss of earnings caused by the injury. *Sullivan's Case*, 218 Mass. 141, 105 N. E. 463. See 2 SEDGWICK, DAMAGES, 9 ed., § 675 *a*. Thus, they emphasize rather than alter the common-law principle of damages. *Lee* v. *William Baird & Co.*, 45 Scot. L. Rep. 717. As total disability certainly resulted from the accidents in the principal cases, it is submitted that the decision of the New York court is the more sound. Nor does this result work an injustice on the employer, since the wages earned by a previously disabled employee, and hence the compensation the employer must pay, are less than those he must pay to an able-bodied man.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACT — CHARACTER OF PAYMENTS — DUTY OF RECEIVER TO PAY PAST CLAIMS. — A receiver carrying on the business of an insolvent corporation petitions for instructions as to whether he need make workmen's compensation payments for injuries that happened before he was appointed. *Held*, that he must make the payments. *Wood* v. *Camden Iron Works*, 221 Fed. 1010 (Dist. Ct., D. N. J.).

At common law the workman's remedy would be in tort. Tort claims that arose prior to the receivership, the receiver is not commonly required to pay. *Easton* v. *Houston & T. C. Ry. Co.*, 38 Fed. 12. See 23 HARV. L. REV. 488. But receivers who carry on the business are required to pay in full antecedent debts of certain classes. *Fosdick* v. *Schall*, 99 U. S. 235. Chief of these are recent debts for operating expenses. *Drennen* v. *Mercantile Trust & Deposit Co.*, 115 Ala. 592, 23 So. 164. Payments under the Workmen's Compensation Acts are pretty clearly not tort payments. See *Interstate Telephone & Telegraph Co.* v. *Public Service Electric Co.*, 86 N. J. L. 26, 28, 90 Atl. 1062; *Trim*